

AMENDED IN SENATE APRIL 16, 2012

AMENDED IN SENATE APRIL 11, 2012

AMENDED IN SENATE MARCH 27, 2012

**SENATE BILL**

**No. 1387**

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**Introduced by Senator Emmerson**  
**(Coauthor: Senator Berryhill)**  
~~(Coauthor: Assembly Member Bill Berryhill)~~

February 24, 2012

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An act to amend Sections 21604 and 21608.5 of, and to add Section 21609.1 to, the Business and Professions Code, and to amend Sections 496a and 496e of the Penal Code, relating to metal theft.

LEGISLATIVE COUNSEL'S DIGEST

SB 1387, as amended, Emmerson. Metal theft.

(1) Existing law governs the business of buying, selling, and dealing in secondhand and used machinery and all ferrous and nonferrous scrap metals and alloys, also known as "junk." Existing law requires junk dealers and recyclers to keep a written record of all sales and purchases made in the course of their business, including the name and address of each person to whom junk is sold or disposed of, and to preserve the written record for at least 2 years after making the final entry of any purchase or sale of junk. Existing law provides that the failure to keep a written record as required is punishable as a misdemeanor.

Existing law prohibits a junk dealer or recycler in this state from providing payment for nonferrous metals unless, in addition to the requirement to create and maintain a written record, specified requirements are met, including that the payment for the material be made by cash or check and that, at the time of sale, the junk dealer or

recycler obtains a clear photograph or video of the seller. Existing law requires the junk dealer or recycler to preserve this information for 2 years after the date of sale.

This bill would prohibit any junk dealer or recycler from possessing a fire hydrant, fire department connection, including, but not limited to, bronze or brass fittings or parts, a manhole cover or lid, or any part of that cover or lid, or a backflow device and connections to that device without a written certification on the letterhead of the agency or utility that owns or previously owned the material and that the entity has sold or is offering the material for sale, and that the person possessing the certificate and identified in the certificate is authorized to negotiate the sale of the material. ~~The bill would make junk dealers and recyclers civilly liable and would also~~ provide that if a junk dealer or recycler lacks the certification described above, the lack of that certification would give rise to the presumption that the property was stolen for purposes of the provisions proscribing receiving stolen property.

(2) Existing law makes it a crime to receive stolen property. Existing law specifically provides that a person who is a dealer in or collector of junk, metals, or secondhand materials, or the agent, employee, or representative of the dealer or collector, and who buys or receives any wire, cable, copper, lead, solder, mercury, iron, or brass that he or she knows or reasonably should know is ordinarily used by or ordinarily belongs to a railroad or other transportation, telephone, telegraph, gas, water, or electric light company, or county, city, city and county, or other political subdivision of the state engaged in furnishing public utility service, without using due diligence to ascertain that the person selling or delivering the property has the legal right to do so, is guilty of criminally receiving that property. Existing law provides that this crime is a misdemeanor. Existing law also provides that any person who buys or receives, for purposes of salvage, any part of a fire hydrant or fire department connection, as specified, is subject to a criminal fine of not more than \$3,000.

This bill would also prohibit any person, including a junk dealer or recycler, engaged in the salvage, recycling, or purchase or sale of scrap metal from possessing those items. The bill would expand the prohibition described above proscribing the purchase or receipt of items that a dealer or collector knows or reasonably should know is ordinarily used by or ordinarily belongs to a transportation or utility company, or a political subdivision of the state engaged in furnishing public utility service, to also apply to recyclers, and to apply to the fire hydrants and

other items described above. The bill would also expand the provision providing that any person who buys or receives, for purposes of salvage, any part of a fire hydrant or fire department connection is subject to a criminal fine of not more than \$3,000 by making that fine applicable to any person who is engaged in the salvage, recycling, purchase, or sale of scrap metal and who, knowing that the item has been stolen or obtained in any manner constituting theft or extortion, possesses a fire hydrant, or any part thereof, a fire department connection, including brass fittings and parts, a manhole cover or lid, or any part of that cover or lid, or a backflow device and connections to that device, or any part of that device.

By creating new crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. The Legislature hereby finds and declares all of
- 2     the following:
- 3     (a) Theft of fire hydrants, manhole covers, and backflow devices
- 4     has significantly increased in recent years and represents a
- 5     significant health and safety issue.
- 6     (b) Local jurisdictions and public agencies have gone to great
- 7     lengths to preserve and protect residents and their property from
- 8     the damages that can result from such theft.
- 9     (c) Additional laws and regulations need to be enacted that
- 10    would provide local governments with the tools to further protect
- 11    both local government property and the health and safety of the
- 12    residents they serve.
- 13    (d) Therefore, it is the intent of the Legislature to strictly prohibit
- 14    fire hydrants, manhole covers, and backflow devices from being
- 15    accepted, in whole or in part, by a recycler or junk dealer for the
- 16    purpose of salvage, unless presented with written certification by

1 a representative of the agency or utility owning or previously  
2 owning the material.

3 (e) By strictly prohibiting these items from being recycled, the  
4 burden is taken off of the recyclers as they will no longer be  
5 saddled with the responsibility of having to decipher whether the  
6 items were stolen or obtained illegally.

7 (f) Furthermore, the Legislature thinks it is important to enable  
8 an agency to recoup, repair, and replace costs, attorney's fees, and  
9 lawsuit costs and will establish penalties for theft of such items.

10 SEC. 2. Section 21604 of the Business and Professions Code  
11 is amended to read:

12 21604. Except as otherwise provided in this article, this article  
13 does not apply to:

14 (a) Any person who buys or sells junk acquired in the conduct  
15 of any business other than that of a junk dealer or recycler.

16 (b) Except as provided in Section 21609.1, those purchases of  
17 scrap metal by a junk dealer or recycler when the payment for the  
18 scrap metal is by check issued to the company represented as being  
19 the owner of the scrap.

20 (c) Scrap metal purchased or received from another junk dealer  
21 or recycler who has recorded, reported, and held the material as  
22 required. The purchase or receipt shall also be exempt from further  
23 holding or reporting provided that the selling party gives the buyer  
24 written assurance of this fact. The seller shall be held responsible  
25 for any failure to report or hold.

26 SEC. 3. Section 21608.5 of the Business and Professions Code  
27 is amended to read:

28 21608.5. (a) A junk dealer or recycler in this state shall not  
29 provide payment for nonferrous material unless, in addition to  
30 meeting the written record requirements of Sections 21605 and  
31 21606, all of the following requirements are met:

32 (1) The payment for the material is made by cash or check. The  
33 check may be mailed to the seller at the address provided pursuant  
34 to paragraph (3) or the cash or check may be collected by the seller  
35 from the junk dealer or recycler on or after the third business day  
36 after the date of sale.

37 (2) At the time of sale, the junk dealer or recycler obtains a clear  
38 photograph or video of the seller.

39 (3) (A) Except as provided in subparagraph (B), the junk dealer  
40 or recycler obtains a copy of the valid driver's license of the seller

1 containing a photograph and an address of the seller or a copy of  
2 a state or federal government-issued identification card containing  
3 a photograph and an address of the seller.

4 (B) If the seller prefers to have the check for the material mailed  
5 to an alternative address, other than a post office box, the junk  
6 dealer or recycler shall obtain a copy of a driver's license or  
7 identification card described in subparagraph (A), and a gas or  
8 electric utility bill addressed to the seller at that alternative address  
9 with a payment due date no more than two months prior to the  
10 date of sale. For purposes of this paragraph, "alternative address"  
11 means an address that is different from the address appearing on  
12 the seller's driver's license or identification card.

13 (4) The junk dealer or recycler obtains a clear photograph or  
14 video of the nonferrous material being purchased.

15 (5) The junk dealer or recycler shall preserve the information  
16 obtained pursuant to this subdivision for a period of two years after  
17 the date of sale.

18 (6) (A) The junk dealer or recycler obtains a thumbprint of the  
19 seller, as prescribed by the Department of Justice. The junk dealer  
20 or recycler shall keep this thumbprint with the information obtained  
21 under this subdivision and shall preserve the thumbprint in either  
22 hardcopy or electronic format for a period of two years after the  
23 date of sale.

24 (B) Inspection or seizure of the thumbprint shall only be  
25 performed by a peace officer acting within the scope of his or her  
26 authority in response to a criminal search warrant signed by a  
27 magistrate and served on the junk dealer or recycler by the peace  
28 officer. Probable cause for the issuance of that warrant must be  
29 based upon a theft specifically involving the transaction for which  
30 the thumbprint was given.

31 (b) Paragraph (1) of subdivision (a) shall not apply if, during  
32 any three-month period commencing on or after the effective date  
33 of this section, the junk dealer or recycler completes five or more  
34 separate transactions per month, on five or more separate days per  
35 month, with the seller and, in order for paragraph (1) of subdivision  
36 (a) to continue to be inapplicable, the seller must continue to  
37 complete five or more separate transactions per month with the  
38 junk dealer or recycler.

(c) This section shall not apply if, on the date of sale, the junk dealer or recycler has on file or receives all of the following information:

(1) The name, physical business address, and business telephone number of the seller's business.

(2) The business license number or tax identification number of the seller's business.

(3) A copy of the valid driver's license of the person delivering the nonferrous material on behalf of the seller to the junk dealer or the recycler.

(d) This section shall not apply to the redemption of nonferrous material having a value of not more than twenty dollars (\$20) in a single transaction, when the primary purpose of the transaction is the redemption of beverage containers under the California Beverage Container Recycling and Litter Reduction Act, as set forth in Division 12.1 (commencing with Section 14500) of the Public Resources Code.

(e) This section shall not apply to coin dealers or to automobile dismantlers, as defined in Section 220 of the Vehicle Code.

(f) For the purposes of this section, "nonferrous material" means copper, copper alloys, stainless steel, or aluminum, but does not include beverage containers, as defined in Section 14505 of the Public Resources Code, that are subject to a redemption payment pursuant to Section 14560 of the Public Resources Code.

(g) This section is intended to occupy the entire field of law related to junk dealer or recycler transactions involving nonferrous material. However, a city or county ordinance, or a city and county ordinance, relating to the subject matter of this section is not in conflict with this section if the ordinance is passed by a two-thirds vote and it can be demonstrated by clear and convincing evidence that the ordinance is both necessary and addresses a unique problem within and specific to the jurisdiction of the ordinance that cannot effectively be addressed under this section.

(h) This section shall become operative on December 1, 2008.

SEC. 4. Section 21609.1 is added to the Business and Professions Code, to read:

21609.1. No junk dealer or recycler shall possess any fire hydrant, or fire department connection, including, but not limited to, brass fittings and parts, or manhole cover or lid or part of that cover or lid, or backflow device or connection to that device or

1 part of that device in the absence of a written certification on the  
2 letterhead of the agency or utility owning or previously owning  
3 the material described in the certification that the agency has either  
4 sold the material described or is offering the material for sale,  
5 salvage, or recycling, and that the person possessing the  
6 certification and identified in the certification is authorized to  
7 negotiate the sale of that material. The lack of a certification shall  
8 give rise to a presumption, in the case of property that was stolen,  
9 that the junk dealer or recycler knew or should have known that  
10 the property was stolen for purposes of prosecution pursuant to  
11 Sections 496, 496a, and 496e of the Penal Code. ~~A junk dealer or~~  
12 ~~recycler violating this section shall also be liable to the owner of~~  
13 ~~the prohibited material for the value of the material and for~~  
14 ~~damages, including the cost of replacement and repair of damage~~  
15 ~~incurred by the agency when the materials were removed, court~~  
16 ~~costs, and reasonable attorney's fees in a civil suit by the owner.~~

17 SEC. 5. Section 496a of the Penal Code is amended to read:

18 496a. (a) Every person who, being a dealer in or collector or  
19 recycler of junk, metals, or secondhand materials, or the agent,  
20 employee, or representative of that dealer or collector or recycler,  
21 buys or receives any wire, cable, copper, lead, solder, mercury,  
22 iron or brass, fire hydrants and connections to those hydrants,  
23 including, but not limited to, bronze or brass fittings and parts, or  
24 manhole covers or lids, or backflow devices and connections to  
25 that device, which he or she knows or reasonably should know is  
26 ordinarily used by or ordinarily belongs to a railroad or other  
27 transportation, telephone, telegraph, gas, water, or electric light  
28 company or fire department, or county, city, city and county, or  
29 other political subdivision of this state engaged in furnishing public  
30 utility service, including water and sanitation services, or fire  
31 protection without using due diligence to ascertain that the person  
32 selling or delivering the same has a legal right to do so, is guilty  
33 of criminally receiving that property, and is punishable, by  
34 imprisonment in a county jail for not more than one year, or by  
35 imprisonment pursuant to subdivision (h) of Section 1170, or by  
36 a fine of not more than two hundred fifty dollars (\$250), or by both  
37 that fine and imprisonment.

38 (b) (1) Any person buying or receiving material pursuant to  
39 subdivision (a) shall, in addition to complying with the  
40 requirements of Sections 21607 and 21608.5 of the Business and

1 Professions Code, obtain evidence of the seller's identity,  
2 including, but not limited to, that seller's full name, signature,  
3 address, driver's license number, vehicle license number, and the  
4 license number of the vehicle delivering the material.

5 (2) The record of the transaction shall include an appropriate  
6 description of the material purchased and such record shall be  
7 maintained pursuant to Section 21607 of the Business and  
8 Professions Code.

9 SEC. 6. Section 496e of the Penal Code is amended to read:

10 496e. (a) Any person who is engaged in the salvage, recycling,  
11 purchase, or sale of scrap metal and who possesses any of the  
12 following items that have been stolen or obtained in any manner  
13 constituting theft or extortion, knowing the property to be so stolen  
14 or obtained, is guilty of a crime:

15 (1) A fire hydrant or any part of that hydrant.

16 (2) Any fire department connection, including, but not limited  
17 to, bronze or brass fittings and parts.

18 (3) Manhole covers or lids, or any part of those covers and lids.

19 (4) Backflow devices and connections to that device, or any  
20 part of that device.

21 (b) A person who violates subdivision (a) shall, in addition to  
22 any other penalty provided by law, be subject to a criminal fine of  
23 not more than three thousand dollars (\$3,000).

24 SEC. 7. No reimbursement is required by this act pursuant to  
25 Section 6 of Article XIII B of the California Constitution because  
26 the only costs that may be incurred by a local agency or school  
27 district will be incurred because this act creates a new crime or  
28 infraction, eliminates a crime or infraction, or changes the penalty  
29 for a crime or infraction, within the meaning of Section 17556 of  
30 the Government Code, or changes the definition of a crime within  
31 the meaning of Section 6 of Article XIII B of the California  
32 Constitution.